

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

Martha Jane Toy, individually, and as Executrix and Personal Representative of the Estate of Russell B. Toy, deceased,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 05-00760
	)	
Plumbers & Pipefitters Local Union No. 74 Pension Plan,	)	
Trustees of Plumbers & Pipefitters Local Union No. 74	)	
Pension Plan, Health and Welfare Plan, Local 74, Welfare	)	
Benefit Plan, Life Insurance Plan, Local 74, Welfare Benefit	)	
Plan, Life Insurance Plan, Local 74, Insurance Plan,	)	
Administrators of Pension and Welfare Plans, Trustees of	)	
Plumbers & Pipefitters Local Union No. 74 Welfare Plan, Plan	)	
Administrator of Pension & Welfare Plans, Insurance Plans,	)	
and Health and Welfare Benefit Plan,	)	
	)	
Defendants.	)	

**ANSWER TO COMPLAINT WITH AFFIRMATIVE DEFENSES**

1. Jurisdiction is admitted in the District of Delaware.
  
2. Venue as alleged is denied. Venue, as determined by the United States District Court for the Eastern District of Pennsylvania is improper in that District. Venue in the United States District Court for the District of Delaware is admitted.
  
3. Denied as stated.
  
4. Denied as stated.
  
5. Denied as stated.
  
6. Denied as stated.
  
7. Denied as stated.
  
8. Answering defendants incorporate the responses to Paragraphs 1-7 as though fully set forth herein.

9. Denied as stated.

10. Denied.

11. Denied as stated.

12. Denied as stated.

13. Denied.

14. Denied.

15. Admitted that Russell exhausted all administrative remedies under the Pension Plan and the Welfare Plan. All other allegations of this paragraph, whether express or implied, are denied.

16. Answering defendants incorporate the responses to Paragraphs 1-15 as though fully set forth herein.

17. Denied.

18. Denied.

19. Denied.

20. Answering defendants incorporate the responses to Paragraphs 1-19 as though fully set forth herein.

21. Denied.

22. Denied.

23. Denied.

24. Answering defendants incorporate the responses to Paragraphs 1-23 as though fully set forth herein.

25. Denied.

WHEREFORE, Answering Defendants demand that the Complaint be dismissed, or, alternatively, that judgment be entered in favor of Answering Defendants and against Plaintiff together with costs and attorney's fees.

**AFFIRMATIVE DEFENSES**

26. The Complaint fails to state a claim upon which relief may be granted both in its entirety and as to the separately delineated claims.

27. Plaintiff lacks standing.

28. The claims asserted in the Complaint are barred by the applicable statutes of limitations applicable to such claim or claims.

29. Plaintiff has failed to join (or name) proper and necessary parties.

30. Plaintiff is not entitled to recover compensatory or punitive or other non-contractual damages.

31. Plaintiff's claims are barred by the doctrines of estoppel and laches.

32. Plaintiff fails to request necessary equitable relief in conjunction with Count IV for "Fiduciary Breach" and therefore such claim fails as a matter of law.

33. The only plans in existence relating to Plumbers & Pipefitters Local Union No. 74 for which Plaintiff appears to be asserting any such claims are: Plumbers & Pipefitters Local Union No. 74 Welfare Plan and Plumbers & Pipefitters Local Union No. 74 Pension Plan. None of the other "plans" listed, mentioned or identified by Plaintiff exist.

34. Plaintiff has failed to name the Plumbers & Pipefitters Local No. 74 Welfare Plan as a defendant.

35. Plumbers & Pipefitters Local No. 74 is not the sponsor of either the Plumbers & Pipefitters Local No. 74 Pension Plan or the Plumbers & Pipefitters Local No. 74 Welfare Plan.

36. The “Trustees of Local 74” are not the “Plan Administrator” of either Plumbers & Pipefitters Local No. 74 Pension Plan or the Plumbers & Pipefitters Local No. 74 Welfare Plan.

37. Plumbers & Pipefitters Local No. 74, not being either a plan sponsor or a plan trustee are not a fiduciary with respect to the Plumbers & Pipefitters Local No. 74 Pension Plan or the Plumbers & Pipefitters Local No. 74 Welfare Plan.

38. “Trustees of Local 74” do not exist.

WHEREFORE, Answering Defendants demand that the Complaint be dismissed, with prejudice, or, alternatively, that judgment be entered in favor of Answering Defendants and against Plaintiff together with costs and attorney’s fees.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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- and -

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Dated: November 7, 2005

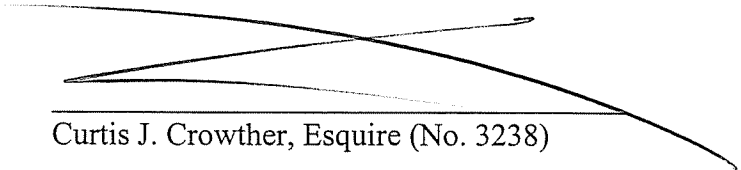
Counsel for Defendants

**CERTIFICATE OF SERVICE**

I, Curtis J. Crowther, Esquire, hereby certify that on this 7<sup>th</sup> day of November 2005, I caused the foregoing ANSWER TO COMPLAINT WITH AFFIRMATIVE DEFENSES to be served on the following counsel of record in the manner noted below:

**BY FIRST CLASS MAIL**

William B. Hildebrand, Esquire  
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Curtis J. Crowther, Esquire (No. 3238)